

AMENDED IN ASSEMBLY SEPTEMBER 5, 2003

AMENDED IN ASSEMBLY AUGUST 28, 2003

AMENDED IN ASSEMBLY JULY 16, 2003

AMENDED IN ASSEMBLY JULY 1, 2003

AMENDED IN SENATE MAY 15, 2003

AMENDED IN SENATE MAY 12, 2003

AMENDED IN SENATE MAY 6, 2003

## SENATE BILL

**No. 122**

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**Introduced by Senator Escutia**  
(Principal coauthor: Assembly Member Corbett)

February 4, 2003

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~~An act to add Sections 17204.6, 17204.7, 17204.8, and 17204.9 to the Business and Professions Code, relating to unfair competition. An act to add Sections 17204.6 and 17204.9 to, and to repeal and add Section 17204.7 of, the Business and Professions Code, and to repeal Section 4 of Chapter \_\_\_\_ of the Statutes of 2003, relating to unfair competition.~~

### LEGISLATIVE COUNSEL'S DIGEST

SB 122, as amended, Escutia. ~~Private enforcement actions~~ *Unfair competition.*

Existing law provides remedies for unfair competition that may be enforced by a governmental agency, including the district attorney, or by a private party acting for the interests of itself, its members, or the general public.

This bill would ~~require~~ *authorize*, subject to specified exceptions, ~~the court to review and approve a party to request court review and approval of~~ a settlement or compromise of an unfair competition action brought or proposed to be brought by a private party on behalf of the general public. The bill would ~~also~~ require that the plaintiff in those actions *serve a specified notice on each defendant in the action and* submit a copy of the complaint to the State Bar of California. The bill would ~~specify certain equitable remedies applicable to all unfair competition actions and would set forth principles for joining these actions. The bill would require a private party seeking specified remedies to submit a copy of the proposed judgment terms to the Attorney General and would require that office to post that information on the Internet~~ *specify set off requirements applicable to unfair competition actions*. The bill would make its provisions contingent upon AB 95 being enacted and becoming effective on or before January 1, 2004 *and would repeal specified provisions of that bill*.

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~ *no*. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 17204.6 is added to the Business and
- 2 Professions Code, to read:
- 3 17204.6. (a) At the time of filing a private cause of action
- 4 under this chapter on behalf of the general public, the plaintiff shall
- 5 notify the State Bar of California and submit a copy of the
- 6 complaint to it. An attorney who fails to comply with this
- 7 subdivision is subject to disciplinary action by the State Bar of
- 8 California.
- 9 (b) (1) ~~At the option of any party to a private action brought~~
- 10 ~~on behalf of the general public under this chapter, a court shall~~
- 11 ~~review and approve any settlement or compromise, including any~~
- 12 ~~agreement, express or implied, regarding the payment of~~
- 13 ~~attorney's fees proposed in connection with a private action or a~~
- 14 ~~private cause of action brought, or proposed to be brought, under~~
- 15 ~~this chapter on behalf of the general public. The request to review~~
- 16 ~~and approve the settlement or compromise shall be made upon~~
- 17 ~~noticed motion. The court shall approve the settlement or~~
- 18 ~~compromise unless based on the evidence, briefing, and~~
- 19 ~~information submitted, it determines that the disposition of the~~

1 action is unfair or fails to reasonably protect the interests of the  
2 general public under Section 17200. Any attorney's fees or costs  
3 awarded by the court shall be consistent with applicable law.

4 (2) (A) When any settlement or compromise of a private  
5 action or a private cause of action on behalf of the general public  
6 is proposed to be brought under this chapter but has not yet been  
7 filed with the court, *any party may seek court review and approval*  
8 *of the settlement or compromise. At the request of any party for*  
9 *court review and approval*, the potential plaintiff shall file and  
10 serve on all parties the following:

11 (i) A complaint entitled "Complaint re: Settlement of an  
12 Action under Section 17200 of the Business and Professions  
13 Code" describing the cause of action proposed to be brought under  
14 this chapter, which shall be filed with a first paper filing fee  
15 pursuant to Section 26820.4 of the Government Code.

16 (ii) A special motion for review and approval of the proposed  
17 ~~fees~~ *settlement or compromise*.

18 (B) A potential defendant who is a party to the compromise or  
19 settlement is not required to file an answer to the complaint but  
20 may file a response to the special motion upon payment of a motion  
21 filing fee pursuant to subdivision (a) of Section 26830 of the  
22 Government Code.

23 (C) *The motion for court review and approval of the settlement*  
24 *or compromise shall be treated as a special proceeding of a civil*  
25 *nature pursuant to Part 3 (commencing with Section 1063) of the*  
26 *Code of Civil Procedure*. Upon hearing the motion, the court shall  
27 approve the settlement or compromise unless based on the  
28 evidence, briefing, and information submitted, it determines that  
29 the disposition of the action is unfair or fails to reasonably protect  
30 the interests of the general public under Section 17200.

31 (3) ~~No~~ *If a party has opted for court review of a settlement or*  
32 *compromise under this section, no settlement moneys may be paid*  
33 *by a defendant or a potential defendant in compromise or*  
34 *settlement of a private action or proposed action brought on behalf*  
35 *of the general public under this chapter unless the settlement or*  
36 *compromise has been reviewed and approved pursuant to a motion*  
37 *under paragraph (1) or (2). If not approved by the court, an*  
38 *agreement to pay any moneys is void and unenforceable.*

39 (4) The court shall review in camera any information submitted  
40 by the plaintiff or the potential plaintiff to support the settlement

1 or compromise pursuant to this section if the information is  
2 protected by the attorney-client or attorney work product  
3 privilege.

4 (5) Any attorney representing a party who enters into a  
5 settlement or compromise or who receives settlement moneys,  
6 including attorney's fees, in a private action or proposed private  
7 action under this chapter on behalf of the general public without  
8 submitting the proposed settlement or compromise, including  
9 attorney's fees, for review and approval by the court pursuant to  
10 paragraph (1) or (2), is subject to disciplinary action by the State  
11 Bar of California, *if a party has opted for court review of a*  
12 *settlement or compromise under this section.*

13 (c) Subdivision (b) shall not apply if the action or cause of  
14 action or proposed action is brought by a labor organization or by  
15 a representative of a labor organization or by a joint labor  
16 management committee established pursuant to the federal Labor  
17 Management Corporation Act of 1978 (29 U.S.C. Sec. 175a) or by  
18 an established employment or civil rights organization on behalf  
19 of employees or the general public. For purposes of this section,  
20 an employment or civil rights organization shall be in existence for  
21 a minimum of five years in order to qualify for an exemption and  
22 have as one of its purposes the vindication of labor, civil,  
23 constitutional or human rights.

24 ~~SEC. 2. Section 17204.7 is added to the Business and~~  
25 ~~Professions Code, to read:~~

26 ~~17204.7. (a) If the court finds that a defendant has engaged~~  
27 ~~in an unlawful, unfair, or fraudulent business act or practice in~~  
28 ~~violation of this chapter and that the defendant has derived ill~~  
29 ~~gotten gains from that act or practice, the court may order any~~  
30 ~~appropriate equitable relief to remedy the act or practice. In~~  
31 ~~addition, a court shall assure that any monetary relief in excess of~~  
32 ~~the amounts paid to the plaintiffs or to affected members of the~~  
33 ~~general public by a defendant, if any, shall be distributed as a cy~~  
34 ~~pres award or fluid recovery pursuant to this section to provide~~  
35 ~~substantial benefit, pursuant to paragraph (2) of subdivision (b),~~  
36 ~~to Californians.~~

37 ~~(b) (1) Prior to the entry of any judgment or order for relief~~  
38 ~~pursuant to this section, the court shall determine the total amount~~  
39 ~~of monetary relief payable as the result of the defendant's~~  
40 ~~unlawful, unfair, or fraudulent business act or practice. The court~~

1 shall set a date when the parties shall report to the court the total  
2 amount actually paid to those members of the public identified and  
3 located as being affected by the act or practice, if any.

4 (2) After the report is received, the court shall amend the  
5 judgment to direct the defendant to pay the remaining balance of  
6 the unpaid ill gotten gains to a nonprofit organization or  
7 foundation to support projects consistent with the objectives and  
8 purposes of the underlying action or to promote justice for all; or  
9 to a court approved fund appropriate to the circumstances of the  
10 particular action; or, if neither of those options is available, to the  
11 State of California.

12 (3) For purposes of this section only, and in connection with a  
13 private action or private cause of action brought on behalf of the  
14 general public under this chapter, a court shall not order any  
15 monetary relief in excess of monetary restitution against a small  
16 business. For this purpose, a “small business” is a business that  
17 has fewer than 10 employees or independent contractors and  
18 average annual gross receipts of less than five hundred thousand  
19 dollars (\$500,000). Nothing in this paragraph is intended to limit  
20 the ability of the court, in the exercise of its equitable powers, to  
21 issue injunctive relief or order restitution against a small business.  
22 This paragraph does not apply to any cause of action that alleges  
23 a violation of any law or regulation affecting civil rights, wages,  
24 or working hours or conditions.

25 (e) (1) A private plaintiff who is seeking cy pres or fluid  
26 recovery shall at least 30 days before the date of the final report and  
27 judgment by the court, as described in paragraph (2) of subdivision  
28 (b), submit to the Attorney General a copy, including a copy in  
29 electronic form, of the proposed terms of the judgment, including  
30 all stipulations and associated agreements between the parties,  
31 together with the notice of the time and place set for hearing on the  
32 entry of the judgment. If the proposed judgment is materially  
33 amended before entry of judgment, the private plaintiff shall  
34 promptly provide the Attorney General with an amended copy.

35 (2) The Attorney General shall make the proposed terms of the  
36 judgment publicly available on the Internet for a period not to  
37 exceed 45 days from the date of its receipt of the judgment. The  
38 posting of information required of the Attorney General pursuant  
39 to this subdivision is administrative in nature, and imposes no  
40 other duty on that office.

~~(3) The receipt of information pursuant to paragraph (1) does not constitute notice affecting the right of the Attorney General to take any other action within its authority at any time.~~

~~(d) Notwithstanding any other provision of law, Section 17208 applies to this section.~~

~~SEC. 3. Section 17204.8 is added to the Business and Professions Code, to read:~~

~~17204.8. (a) All persons may be joined in one action as defendants if there is asserted against them:~~

~~(1) Any right to relief jointly, severally, or in the alternative, in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action; or~~

~~(2) A claim, right, or interest adverse to them in the property or controversy which is the subject of the action.~~

~~(b) It is not necessary that each defendant be interested as to every cause of action or as to all relief prayed for. Judgment may be given against one or more defendants according to their respective liabilities.~~

~~(c) Where the plaintiff is in doubt as to the person from whom he or she is entitled to redress, he or she may join two or more defendants, with the intent that the question as to which, if any, of the defendants is liable, and to what extent, may be determined between the parties.~~

~~(d) The fact that individual defendants who are not associates or affiliates of each other are engaged in the same or similar types of businesses and are alleged to have violated the same or similar laws or regulations shall not, in itself, constitute a basis for joinder under this chapter.~~

~~SEC. 2. Section 17204.7 of the Business and Professions Code, as added by Section 1 of Chapter \_\_\_ of the Statutes of 2003 (Assembly Bill 95), is repealed.~~

~~17204.7. (a) A person bringing a private action for relief on behalf of the general public pursuant to Section 17204 shall serve on each defendant at the time of service of a demand letter or a complaint, a notice containing the following statement in boldface type:~~

~~“IMPORTANT CONSUMER INFORMATION: You are receiving this notice because at least one of the claims against you alleges an unlawful, unfair, or fraudulent business act or practice~~

1 ~~under the California Business and Professions Code. YOU HAVE~~  
2 ~~IMPORTANT LEGAL RIGHTS, and you may wish to consult an~~  
3 ~~attorney promptly to get helpful legal advice in responding to this~~  
4 ~~notice.~~

5 ~~In addition, you may wish to contact your local District~~  
6 ~~Attorney's Office, the Attorney General's Office, or the local bar~~  
7 ~~association in your county, or all of these offices, for legal~~  
8 ~~information about this type of lawsuit.~~

9 ~~It also is important that you know that you are not required to~~  
10 ~~pay any money at this time. Moreover, RECEIPT OF THIS~~  
11 ~~NOTICE DOES NOT NECESSARILY MEAN YOU WILL BE~~  
12 ~~FOUND LIABLE FOR ANYTHING. Your best protection is to~~  
13 ~~seek out legal advice before agreeing to anything.~~

14 ~~Once you have an attorney representing you, the attorney for the~~  
15 ~~plaintiff in this case is prohibited from contacting you unless your~~  
16 ~~attorney is present or your attorney has given the plaintiff's~~  
17 ~~attorney permission to contact you. If the plaintiff's attorney does~~  
18 ~~try to contact you personally, you should immediately report the~~  
19 ~~contact to your attorney. Attorneys are not allowed to threaten to~~  
20 ~~report you to a law enforcement or regulatory agency if you refuse~~  
21 ~~to settle a claim. If the plaintiff's attorney does so, you should~~  
22 ~~notify your attorney or the State Bar of California immediately.~~

23 ~~If you choose not to hire an attorney, you may obtain additional~~  
24 ~~information about how to represent yourself on the California~~  
25 ~~Courts Web site, [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov).~~

26 ~~If you agree to pay any attorney's fees to the plaintiff in this case,~~  
27 ~~a court must review these fees, pursuant to subdivision (a) of~~  
28 ~~Section 17204.6 of the California Business and Professions~~  
29 ~~Code."~~

30 ~~(b) The notice in subdivision (a) shall be in at least 14 point~~  
31 ~~boldface type and shall not contain any other statements except for~~  
32 ~~those required in subdivision (a).~~

33 ~~(c) An attorney who fails to comply with this section may be~~  
34 ~~subject to disciplinary action by the State Bar of California.~~

35 *SEC. 3. Section 17204.7 is added to the Business and*  
36 *Professions Code, to read:*

37 *17204.7. (a) A person bringing a private action for relief on*  
38 *behalf of the general public pursuant to Section 17204 shall serve*  
39 *on each defendant at the time of service of a demand letter or a*  
40 *complaint, a notice containing the following statement in boldface*



1 type:

2

3 “**IMPORTANT CONSUMER INFORMATION:** You are  
4 receiving this notice because at least one of the claims against you  
5 alleges an unlawful, unfair, or fraudulent business act or practice  
6 under the California Business and Professions Code. **YOU HAVE**  
7 **IMPORTANT LEGAL RIGHTS**, and you may wish to consult an  
8 attorney promptly to get helpful legal advice in responding to this  
9 notice. In addition, you may wish to contact the local bar  
10 association in your county for legal information about this type of  
11 lawsuit.

12 It also is important that you know that you are not required to  
13 pay any money at this time. Moreover, **RECEIPT OF THIS**  
14 **NOTICE DOES NOT NECESSARILY MEAN YOU WILL BE**  
15 **FOUND LIABLE FOR ANYTHING**. Your best protection is to seek  
16 out legal advice before agreeing to anything.

17 Once you have an attorney representing you, the attorney for the  
18 plaintiff in this case is prohibited from contacting you unless your  
19 attorney is present or your attorney has given the plaintiff’s  
20 attorney permission to contact you. If the plaintiff’s attorney does  
21 try to contact you personally, you should immediately report the  
22 contact to your attorney. Attorneys are not allowed to threaten to  
23 report you to a law enforcement or regulatory agency if you refuse  
24 to settle a claim. If the plaintiff’s attorney does so, you should  
25 notify your attorney or the State Bar of California immediately.

26 If you choose not to hire an attorney, you may obtain additional  
27 information about how to represent yourself on the California  
28 Courts Web site, [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov).

29 If you agree to enter into a settlement or pay any attorney’s fees  
30 to the plaintiff in this case, you have the right to have a court review  
31 and approve the settlement or the fees before you pay them, except  
32 in certain limited circumstances, pursuant to Section 17204.6 of  
33 the California Business and Professions Code.”

34

35 (b) The notice described in subdivision (a) shall be in at least  
36 14-point boldface type and shall not contain any other statements  
37 except those required in subdivision (a).

38 (c) An attorney who fails to comply with this section may be  
39 subject to disciplinary action by the State Bar of California.





1 SEC. 4. Section 17204.9 is added to the Business and  
2 Professions Code, to read:

3 17204.9. (a) A court in reviewing an action brought pursuant  
4 to this chapter may, in the interests of justice, order consolidation  
5 or coordination of actions.

6 (b) In order to prevent double recovery, a court may, in the  
7 exercise of its equitable powers, allow any party to present  
8 information about a prior action against the same defendant and  
9 allow a set off against claims in a later action against that  
10 defendant, if the later action is based on the same facts, occurring  
11 at the same time, and raises the same issues as the prior action.

12 ~~SEC. 5. The provisions of subdivision (d) of Section 17204.8~~  
13 ~~of the Business and Professions Code added by this act do not~~  
14 ~~constitute a change in, but are declaratory of, existing law.~~

15 (c) *A judgment in a private action brought on behalf of the*  
16 *general public does not affect a judgment in an action brought by*  
17 *a public prosecutor, except to the extent both judgments order*  
18 *payment to members of the public to redress the same violations of*  
19 *law based on the same facts, occurring at the same time. Under*  
20 *those circumstances, payments actually made to members of the*  
21 *public under one judgment may be offset against payments owed*  
22 *under the other judgment in order to prevent double recovery.*

23 SEC. 5. Section 4 of Chapter \_\_\_ of the Statutes of 2003  
24 (Assembly Bill 95) is repealed.

25 ~~Sec. 4. The provisions of this act are not severable. If any~~  
26 ~~provision of this act or its application is held invalid, all of the other~~  
27 ~~provisions of this act and all of their applications shall be invalid.~~

28 SEC. 6. This act shall become operative only if Assembly Bill  
29 95 of the 2003–04 Regular Session is enacted and becomes  
30 effective on or before January 1, 2004.